

**ASSEMBLY BILL**

**No. 1304**

**Introduced by Assembly Member Calderon**

February 22, 2005

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An act to amend Section 4406 of the Commercial Code, relating to commercial law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1304, as introduced, Calderon. Bank deposits and collections: return of paid items: substitute checks.

Existing commercial law governs the payment of checks by banks. Existing law requires a bank, if it does not return paid checks to its customer, to retain the items for 7 years after receipt, and to furnish, on request, at least 2 items or legible copies of those items to a customer with respect to each statement of account sent to the customer.

This bill would also allow a customer to request a substitute check under those circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4406 of the Commercial Code, as
- 2 amended by Section 1 of Chapter 131 of the Statutes of 2004, is
- 3 amended to read:
- 4 4406. (a) A bank that sends or makes available to a customer
- 5 a statement of account showing payment of items for the account
- 6 shall either return or make available to the customer the items
- 7 paid or provide information in the statement of account sufficient

1 to allow the customer reasonably to identify the items paid. The  
2 statement of account provides sufficient information if the item is  
3 described by item number, amount, and date of payment. If the  
4 bank does not return the items, it shall provide in the statement of  
5 account the telephone number that the customer may call to  
6 request an item or a legible copy ~~thereof or a substitute check~~  
7 pursuant to subdivision (b).

8 (b) If the items are not returned to the customer, the person  
9 retaining the items shall either retain the items or, if the items are  
10 destroyed, maintain the capacity to furnish legible copies of the  
11 items until the expiration of seven years after receipt of the items.  
12 A customer may request an item from the bank that paid the item,  
13 and that bank shall provide in a reasonable time either the item  
14 or, if the item has been destroyed or is not otherwise obtainable,  
15 a legible copy of the item. A bank shall provide, upon request,  
16 and without charge to the customer, at least two items, or a  
17 legible copy ~~thereof or a substitute check for each item~~, with  
18 respect to each statement of account sent to the customer.

19 (c) If a bank sends or makes available a statement of account  
20 or items pursuant to subdivision (a), the customer shall exercise  
21 reasonable promptness in examining the statement or the items to  
22 determine whether any payment was not authorized because of  
23 an alteration of an item or because a purported signature by or on  
24 behalf of the customer was not authorized. If, based on the  
25 statement or items provided, the customer should reasonably  
26 have discovered the unauthorized payment, the customer shall  
27 promptly notify the bank of the relevant facts.

28 (d) If the bank proves that the customer failed, with respect to  
29 an item, to comply with the duties imposed on the customer by  
30 subdivision (c), the customer is precluded from asserting any of  
31 the following against the bank:

32 (1) The customer's unauthorized signature or any alteration on  
33 the item if the bank also proves that it suffered a loss by reason  
34 of the failure.

35 (2) The customer's unauthorized signature or alteration by the  
36 same wrongdoer on any other item paid in good faith by the bank  
37 if the payment was made before the bank received notice from  
38 the customer of the unauthorized signature or alteration and after  
39 the customer had been afforded a reasonable period of time, not

1 exceeding 30 days, in which to examine the item or statement of  
2 account and notify the bank.

3 (e) If subdivision (d) applies and the customer proves that the  
4 bank failed to exercise ordinary care in paying the item and that  
5 the failure contributed to loss, the loss is allocated between the  
6 customer precluded and the bank asserting the preclusion  
7 according to the extent to which the failure of the customer to  
8 comply with subdivision (c) and the failure of the bank to  
9 exercise ordinary care contributed to the loss. If the customer  
10 proves that the bank did not pay the item in good faith, the  
11 preclusion under subdivision (d) does not apply.

12 (f) Without regard to care or lack of care of either the  
13 customer or the bank, a customer who does not within one year  
14 after the statement or items are made available to the customer  
15 (subdivision (a)) discover and report the customer's unauthorized  
16 signature on or any alteration on the item is precluded from  
17 asserting against the bank the unauthorized signature or  
18 alteration. If there is a preclusion under this subdivision, the  
19 payer bank may not recover for breach of warranty under Section  
20 4208 with respect to the unauthorized signature or alteration to  
21 which the preclusion applies.

22 (g) This section shall remain in effect only until January 1,  
23 2010, and as of that date is repealed, unless a later enacted  
24 statute, which is enacted before January 1, 2010, deletes or  
25 extends that date.

26 SEC. 2. Section 4406 of the Commercial Code, as amended  
27 by Section 2 of Chapter 131 of the Statutes of 2004, is amended  
28 to read:

29 4406. (a) A bank that sends or makes available to a customer  
30 a statement of account showing payment of items for the account  
31 shall either return or make available to the customer the items  
32 paid or provide information in the statement of account sufficient  
33 to allow the customer to identify the items paid. If the bank does  
34 not return the items, it shall provide in the statement of account  
35 the telephone number that the customer may call to request an  
36 item or a legible copy ~~thereof~~ *or a substitute check* pursuant to  
37 subdivision (b).

38 (b) If the items are not returned to the customer, the person  
39 retaining the items shall either retain the items or, if the items are  
40 destroyed, maintain the capacity to furnish legible copies of the

1 items until the expiration of seven years after receipt of the items.  
2 A customer may request an item from the bank that paid the item,  
3 and that bank shall provide in a reasonable time either the item  
4 or, if the item has been destroyed or is not otherwise obtainable,  
5 a legible copy of the item. A bank shall provide, upon request,  
6 and without charge to the customer, at least two items, or a  
7 legible copy ~~thereof~~ *or a substitute check for each item*, with  
8 respect to each statement of account sent to the customer.

9 (c) If a bank sends or makes available a statement of account  
10 or items pursuant to subdivision (a), the customer shall exercise  
11 reasonable promptness in examining the statement or the items to  
12 determine whether any payment was not authorized because of  
13 an alteration of an item or because a purported signature by or on  
14 behalf of the customer was not authorized. If, based on the  
15 statement or items provided, the customer should reasonably  
16 have discovered the unauthorized payment, the customer shall  
17 promptly notify the bank of the relevant facts.

18 (d) If the bank proves that the customer failed, with respect to  
19 an item, to comply with the duties imposed on the customer by  
20 subdivision (c), the customer is precluded from asserting any of  
21 the following against the bank:

22 (1) The customer's unauthorized signature or any alteration on  
23 the item if the bank also proves that it suffered a loss by reason  
24 of the failure.

25 (2) The customer's unauthorized signature or alteration by the  
26 same wrongdoer on any other item paid in good faith by the bank  
27 if the payment was made before the bank received notice from  
28 the customer of the unauthorized signature or alteration and after  
29 the customer had been afforded a reasonable period of time, not  
30 exceeding 30 days, in which to examine the item or statement of  
31 account and notify the bank.

32 (e) If subdivision (d) applies and the customer proves that the  
33 bank failed to exercise ordinary care in paying the item and that  
34 the failure contributed to loss, the loss is allocated between the  
35 customer precluded and the bank asserting the preclusion  
36 according to the extent to which the failure of the customer to  
37 comply with subdivision (c) and the failure of the bank to  
38 exercise ordinary care contributed to the loss. If the customer  
39 proves that the bank did not pay the item in good faith, the  
40 preclusion under subdivision (d) does not apply.

- 1 (f) Without regard to care or lack of care of either the  
2 customer or the bank, a customer who does not within one year  
3 after the statement or items are made available to the customer  
4 (subdivision (a)) discover and report the customer's unauthorized  
5 signature on or any alteration on the item is precluded from  
6 asserting against the bank the unauthorized signature or  
7 alteration. If there is a preclusion under this subdivision, the  
8 payer bank may not recover for breach of warranty under Section  
9 4208 with respect to the unauthorized signature or alteration to  
10 which the preclusion applies.  
11 (g) This section shall become operative on January 1, 2010.

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